

**SUPERIOR COURT
of the
STATE OF DELAWARE**

**Susan C. Del Pesco
JUDGE**

NEW CASTLE COUNTY COURTHOUSE
**500 North King Street
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Wilmington, DE 19801
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Submitted: June 6, 2006
Decided: August 16, 2006

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Re: *State of Delaware v. Jan Lewan a/k/a Jan Lewanski a/k/a Jan Lewandowski d/b/a J.R.D.
Productions, Inc., Jan Lewan Show Gifts, Inc.*
I.D. No. 030003197

Decision Upon State's Motion for Distribution of Assets - **DENIED**
Decision Upon PAT Tours Inc.'s Motion to Vacate November 14, 2005, Order and Return
Property – **GRANTED**

Dear Counsel:

On March 10, 2003, Jan Lewandowski ("defendant") was indicted by the New Castle County Grand Jury on fifty-seven (57) felony counts related to the operation of his businesses, J.R.D. Productions, Inc. and Jan Lewan Show Gifts, Inc. Defendant was charged with Racketeering, multiple counts of Securities Fraud, Theft, the Sale of Unregistered Securities, and the Sale of Unregistered Securities by an Unregistered Agent.

On December 8, 2003, defendant pled guilty to Count 1 – Racketeering; Count 2 – Theft; Count 4 – Sale of Unregistered Securities, Count 5 – Sale of Securities by an Unregistered Agent; Count 7 – Securities Fraud; and Count 42 – Theft.¹ Defendant was sentenced to five years imprisonment, plus probation. He was ordered to pay restitution to Delaware victims in the amount of \$87,000.00.

On January 28, 2005, the State commenced an Organized Crime and Racketeering (“R.I.C.O.”) forfeiture action pursuant to 11 Del. C. § 1506. The State alleged that \$87,000.00 which passed from defendant to PAT Tours, Inc. (“PAT Tours”), were proceeds of defendant’s illegal activity.

On November 14, 2005, a hearing was held in Superior Court. PAT Tours was not given notice of the hearing, nor an opportunity to be heard. Based on the testimony offered at that hearing, this Court entered an Order finding that the money (\$87,000.00) was to be forfeited as proceeds of racketeering.²

On December 8, 2005, Bank of America complied with this Court’s November 14, 2005, Order, and seized \$87,000.00 in United States currency from PAT Tours’ business investment account.³ The money was subsequently transferred to Delaware.

On January 10, 2006, the State filed a Motion to Distribute Assets, and provided PAT Tours with notice and the opportunity to state its position. On February 22, 2006, PAT Tours filed a Motion to Vacate the November 14, 2005, Order and Return Property on jurisdictional

¹ See Plea Agreement, D.I. 23.

² PAT Tours had several bank accounts at Bank of America. The Court’s November 14, 2005, Order did not specify the account from which \$87,000.00 was to be seized. See Order of Forfeiture, D.I. 39.

³ See Appendix to PAT Tour’s Answering Br., D.I. 52, at B-0000166-0000167; Evidentiary Hr’g, D.I. 49, at 47:21-48:12; 49:2-52:14, April 4, 2006.

grounds, denying any involvement in criminal activity, and asserting that it was duly licensed to transmit money under the laws of the State of Massachusetts.⁴

Jurisdiction to Seize Assets

The only issue this Court is required to decide is whether the November 14, 2005, Order directing Bank of America to seize money held by PAT Tours in Massachusetts exceeded the jurisdictional authority of this Court. I conclude that it did.

PAT Tours had its money on deposit with Bank of America. It appears that the money was deposited in a Springfield, Massachusetts branch. The bank which processed and paid drafts on the PAT Tours' account, is the proper bank to be served with legal process.⁵ Thus, the situs of the \$87,000.00 was Springfield, Massachusetts.

The authority of every tribunal is necessarily restricted by the territorial limits of the state in which it is established.⁶ A Delaware Court does not have authority to reach beyond its borders to attach property in another state.

In this action both the State and PAT Tours argue that Delaware's long arm statute, 10 Del. C. § 3104, is controlling. Each side argues that PAT Tours is, or is not, subject to jurisdiction in Delaware. Such an argument misses the mark. The State has not initiated a civil action against PAT Tours. Consequently, it does not seek personal jurisdiction. It seeks forfeiture of funds held in Massachusetts by PAT Tours; funds it believes are the product of defendant's fraudulent activities. It seeks to attach the funds in order to forfeit them for the benefit of Delawareans who were defrauded by the defendant.

⁴ See PAT Tours Mot. to Vacate, D.I. 46.

⁵ 6 Del. C. § 4-105(3).

⁶ *Shaffer v. Heitner*, 433 U.S. 186, 199 (1977); *Pennoyer v. Neff*, 95 U.S. 714, 720 (1877); *In Re Forfeiture of \$1,159,420*, 486 N.W.2d 326 (Mich. App. 1992) *cert. denied*, 114 S.Ct. 189 (1993); *Blaustein v. Standard Oil Co. of Indiana*, 56 A.2d 772, 781 (Del. Super. 1974); 37 C.J.S. *Forfeitures* § 16 (2006).

The money in the PAT Tours' account (assuming, arguendo, that the State can overcome the formidable factual issue of whether the money seized was money produced by defendant's criminal activity, and can overcome the defense that PAT Tours is an innocent party) cannot be attached in Delaware. The State must go to Massachusetts. The bank account of PAT Tours is not sited in Delaware; the money is not here to be attached.⁷

This Court lacked jurisdiction to enter its November 14, 2005, Order. It is hereby vacated. The funds held in Delaware are to be returned to PAT Tours forthwith, along with any accrued interest.

PAT Tours has requested attorneys fees in connection with these proceedings. In Delaware, a court may not order the payment of attorney's fees as part of costs to be paid by the non-prevailing party unless the payment of such fees is authorized by some provision of statute or contract.⁸ PAT Tours has provided no statutory or contractual basis for the awarding of such fees.

The State's motion for Distribution of Assets is DENIED. PAT Tours' Motion to Vacate November 14, 2005, Order and Return Property is GRANTED.

IT IS SO ORDERED.

Very truly yours

Susan C. Del Pesco

Original to Prothonotary

⁷ See *Limonium Maritime v. Mizushima Marinera*, 961 F.Supp. 600, 607 (S.D.N.Y. 1997).

⁸ *Casson v. Nationwide Ins. Co.*, 455 A.2d 361, 370 (Del. Super. 1982).